Transamerica Life Insurance Company v. Caramadre et al Doc. 11

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., HARRISON CONDIT, and FORTUNE FINANCIAL SERVICES, INC., Defendants;	C.A. No. 09-470-S
TRANSAMERICA LIFE INSURANCE COMPANY, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., ESTELLA RODRIGUES, EDWARD MAGGIACOMO, JR., LIFEMARK SECURITIES CORP., and PATRICK GARVEY, Defendants;	C.A. No. 09-471-S
WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., ADM ASSOCIATES, LLC, EDWARD HANRAHAN, THE LEADERS GROUP, INC., and CHARLES BUCKMAN,	C.A. No. 09-472-S

Dockets.Justia

Defendants;	)	
	)	
WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO,	)	
Plaintiff,	)	
	)	
vs.	)	C.A. No. 09-473-S
	)	
JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., DK LLC, EDWARD HANRAHAN, THE LEADERS GROUP, INC., and JASON VEVEIROS,	)	
Defendants;	)	
	)	
	)	
WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO,	)	
Plaintiff,	)	
	)	
vs.	)	
	)	C.A. No. 09-502-S
JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., NATCO PRODUCTS CORP., EDWARD HANRAHAN, and THE LEADERS GROUP, INC.,	)	
Defendants;	)	
	)	
	)	
TRANSAMERICA LIFE INSURANCE COMPANY,	)	
Plaintiff,	)	
	)	
vs.	)	
	)	C.A. No. 09-549-S
LIFEMARK SECURITIES CORP., JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC. and EDWARD MAGGIACOMO, JR.,	)	
Defendants; and	)	
	)	

WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., HARRISON CONDIT, and FORTUNE FINANCIAL SERVICES, INC., Defendants.	)	C.A. No. 09-564-S

PLAINTIFFS' REPLY TO OBJECTION TO MOTION TO COMPEL DEFENDANT ESTATE PLANNING RESOURCES TO RESPOND TO INTERROGATORIES

Defendant Estate Planning Resources ("EPR") contends it should not respond to Plaintiffs' interrogatories because: 1) the Initial Case Management Order ("ICMO") excuses its sole employee and shareholder, Joseph Caramadre, from responding on behalf of the company; and 2) "the law" excuses EPR from answering interrogatories because, it claims, no one can respond for the corporation without subjecting himself to a "real and appreciable risk of self incrimination." *See Memorandum of Law in Support of EPR's Objection to Plaintiffs' Motion to Compel EPR to Respond to Interrogatories* (hereafter "EPR Objection"), at 6-9 (filed 10/13/11). EPR's arguments are fundamentally flawed. First, the ICMO does not extend any protection or privilege to EPR. Its inability to force Caramadre to sign EPR's interrogatory answers does not relieve it of its obligation to enlist another individual to do so. Second, "the law" does not "protect" EPR because EPR has the means to respond to discovery even if Caramadre refuses to participate.

I. THE ICMO DOES NOT PROTECT EPR

It is undisputable that the ICMO affords no discovery protection to EPR. Its protections extend only to the "Target" defendants and any parties who might receive discovery requests from the Targets. Faced with this reality, EPR asks the Court to apply the "spirit" of the ICMO to excuse it from participating in full discovery. *See* EPR Objection at pp. 4, 6-7.

EPR's reliance on the alleged "spirit" of the ICMO is unavailing. Its contention directly contradicts its arguments when EPR sought to compel Plaintiffs to respond to EPR's interrogatories. Then, Plaintiffs showed that a literal reading of the ICMO created an unfair discovery "loophole" that would allow EPR to obtain discovery that Caramadre could not obtain individually. EPR emphasized that it and Caramadre are different parties and urged the Court to apply the literal terms of the ICMO despite the "loophole" because it was a negotiated agreement. *See* EPR's Memorandum in Support of its Objection to Plaintiff's Motion for Protective Order ("EPR Protective Order Objection") at p. 6 (filed 12/10/10); EPR's Response to Plaintiff's Objection to Magistrate Judge's Order Denying Plaintiffs' Motion for Protective Order ("EPR Response to Magistrate Judge Appeal") at pp. 4-7 (filed 1/31/11).

The Court agreed with EPR and directed Plaintiffs to answer EPR's interrogatories. In so ruling, the Court held that "the responsibility was on both sides to scrutinize the proposed language to see if there were any loopholes in it and once they gave their agreement the order was entered . . . ." *See* Exhibit A at p.26.

Now, because EPR tries to dodge Plaintiffs' interrogatories, it reverses course and asks the Court to modify the terms of the ICMO and "impose an *ex post facto* restriction" (to use the phrase EPR championed in response to Plaintiff's motion for protective order) on Plaintiffs'

ability to obtain discovery.[1] The ICMO affords no discovery protection to EPR and EPR should not be permitted to claim additional protections "simply because [it] did not contemplate what [it was] doing" when it agreed to the ICMO. *Id.*

Moreover, the "spirit" of the ICMO does not justify EPR's refusal to provide interrogatory answers. Plaintiffs are not using interrogatories to EPR as a backdoor way of obtaining information from Caramadre. It is irrelevant to Plaintiffs whether EPR's interrogatory answers are signed by Caramadre or any other individual. Indeed, as Plaintiffs have argued, several alternatives are available to EPR. The "spirit" of the ICMO requires that EPR make every reasonable effort to respond to discovery that is plainly appropriate under the ICMO and the discovery rules.

Finally, through its objections, EPR seeks to unfairly manipulate the discovery process. Previously, in response to Plaintiff's concerns about being forced to participate in one-sided discovery, EPR stated that "there is nothing to prevent Plaintiffs from serving interrogatories upon EPR that could be answered by another one of EPR's officers or agents, . . . [but] [b]ecause Plaintiffs have not pursued this option, there is no way of knowing what answers they might receive from EPR were they to try." *See* EPR Response to Magistrate Judge Appeal at p.6. Now, however, EPR states that no person can respond for it without jeopardizing his Fifth Amendment rights. It offers this response to even the most benign interrogatories, which inquire into, among other things, *information that EPR has already provided to law enforcement authorities*. *See* Interrogatory No. 11. It is patent that EPR never had any intention of providing

[1] EPR previously argued that "[t]he Court should not allow Plaintiffs to impose an *ex post facto* restriction upon EPR simply because they did not contemplate what they were doing." EPR Response to Magistrate Judge Appeal at p. 7.

interrogatory answers as it previously represented – regardless of the substance of the interrogatory. Equity counsels against EPR's current effort to evade discovery.

II. "The Law" Does Not Insulate EPR From Participating in Discovery

The case law EPR cites offers no support for its position. EPR suggests that precedent supports a bar against Plaintiff's discovery during the ongoing criminal investigation into Mr. Caramadre. Significantly, however, Mr. Caramadre has *not* invoked the Fifth Amendment. When, as here, an individual has not invoked the Fifth Amendment, the Court need not concern itself with the balancing of an individual's right to silence and a litigant's right to obtain discovery. *United States v. Kordel*, 397 U.S. 1, 8-9 (1970).

EPR incorrectly suggests that the Supreme Court in *Kordel* specified that "the appropriate" remedy in a situation such as this is "a protective order . . . postponing civil discovery until termination of the criminal action." EPR Objection at 8 (quoting *Kordel*, 397 U.S. at 8-9). EPR misconstrues *Kordel*. In that case, rather than announcing any concrete rule, the Supreme Court merely "*assum[ed]*" that a stay of discovery would be appropriate if "no one can answer the interrogatories addressed to the corporation without subjecting himself to a 'real and appreciable risk of self-incrimination.'" *Kordel*, 397 U.S. at 8-9 (emphasis added). The Court specified that it "*need not decide this troublesome question*" because the corporate representative never actually invoked the Fifth Amendment. *Id.* (emphasis added). Like the corporate principals in *Kordel*, neither Caramadre, nor any other party to this case has asserted his Fifth Amendment rights. *Kordel* supports Plaintiffs' right to obtain interrogatory answers from EPR.

Even if Caramadre eventually invokes the Fifth Amendment, EPR still could not piggyback on his invocation to evade its discovery obligations. As discussed in Plaintiffs'

Original Memorandum, Fifth Amendment protections do not extend to companies and EPR could designate any other individual to sign its interrogatory responses.

EPR suggests that if Mr. Caramadre refuses to provide information, then it will be unable to provide a response because Mr. Caramadre is the sole source of the information for the company and, therefore, any agent would effectively be unable to acquire the facts necessary for the company to compile a response. This argument is unpersuasive for many reasons.

There are several sources of information available to whatever agent EPR designates that will allow the company to respond to interrogatories. Basic information - such as identification of payments, employees and officers (as requested in interrogatories 5 and 10), could be obtained by reviewing company records.

Additional information could be obtained by speaking with individuals other than Caramadre or any other named Target who may refuse to provide information pursuant to the ICMO. EPR's many attorneys undoubtedly have knowledge about the facts of these cases. Such knowledge is imputed to the company and must be disclosed to - and by - any individual designated to respond to the interrogatories. *See, e.g., Long v. Joyner*, 574 S.E.2d 171, 175 (N.C. App. 2002) (affirming sanctions for failure to respond to interrogatories seeking information known by attorney because "the knowledge of an attorney hired by a client and doing work on behalf of that client is imputed to the client"); *Lundin v. Stratmoen*, 85 N.W.2d 828, 831-32 (Minn. 1957) ("knowledge of an attorney is imputed to his client so that, apart from privileged matters, interrogatories, under Rule 33, must be answered where they are relevant, although the party litigant to whom they are directed has no personal knowledge or information, if his attorney has such knowledge or information. . . ."). There is no impediment to the disclosure of

such information by EPR's attorneys because the interrogatories do not seek disclosure of privileged information. *Id.*

The fact that Caramadre retained the same attorneys to represent himself and EPR does not allow him to direct counsel not to disclose information either directly in the form of interrogatory answers or to another agent designated to respond for the company. Indeed, when an attorney represents a corporation and the primary employees have invoked the Fifth Amendment in response to discovery propounded to the company, the company must appoint the attorney or another agent to disclose "information provided by the individual defendants." *City of Chicago v. Reliable Truck Parts Co., Inc.*, No. 88C1458, 1989 WL 32923, *4 (N.D. Ill. Mar. 31, 1989). As the court recognized in *Reliable Truck Parts*, "the choice of counsel shouldn't be a weapon to frustrate the pleading or discovery process." *Id. See also*, *Central State's, Southeast and Southwest Areas Pension Fund v. Carstensen Freight Lines, Inc.*, No. 96C6252, 1998 WL 413490, *4 (recognizing the propriety of the appointment of a corporation's attorney to respond to interrogatories for the company when the company's "sole shareholder, sole employee and sole officer" invoked the Fifth Amendment); *In re Folding Carton Antitrust Litigation*, 76 F.R.D. 417, 419 (N.D. Ill. 1977) (admonishing against counsel's joint representation of corporation and employee if employee's invocation of the Fifth Amendment conflicts with corporation's interest and obligation to provide discovery).

Contrary to EPR's assertion, an appropriate agent can be found to verify interrogatory answers for the company. The agent may be any one of EPR's attorneys, or another individual who can obtain information from the attorneys. *See, e.g., Reliable Truck Parts Co., Inc.*, 1989 WL 32923 at *4 ((N.D. Ill. Mar. 31, 1989).

CONCLUSION

For the reasons set forth herein, as well as in their original memorandum, Plaintiffs respectfully request that EPR be compelled to respond to Plaintiffs' interrogatories within 20 days of hearing on this motion.

Respectfully submitted,

/s/ Brooks R. Magratten
Brooks R. Magratten, Esq., No. 3585
David E. Barry, Esq., pro hac vice admitted
Michael J. Daly, Esq. No. 6729
PIERCE ATWOOD LLP
Attorneys for Plaintiff
10 Weybosset St., Suite 400
Providence, RI 02903
(401) 588-5113 [Tel.]
(401) 588-5166 [Fax]
bmagratten@pierceatwood.com
dbarry@pierceatwood.com
mdaly@pierceatwood.com

Dated: October 24, 2011

CERTIFICATE OF SERVICE

I certify that the within document was electronically filed with the clerk of the court on October 24, 2011, and that it is available for viewing and downloading from the Court's ECF system. Service by electronic means has been effectuated on all counsel of record.

/s/ Brooks R. Magratten